



## Article 2. Applicability

### §66279.10. Applicability.

(a) Rebuttable presumption. Used oil containing more than 1,000 ppm total halogens is presumed to be a RCRA hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261, Title 40, Code of Federal Regulations (commencing with section 261.30).

(1) Generators of used oil shall determine whether used oil managed by them contains more than 1,000 ppm total halogens by:

(A) testing each shipment of used oil for total halogens as specified in section 66279.90(a); or,

(B) applying knowledge of the halogen content of the used oil in light of the materials or processes used. A generator who elects to apply knowledge in lieu of testing to determine if used oil exceeds 1,000 ppm total halogens shall do all of the following:

1. Determine the halogen content of the used oil due to the presence of halogenated substances in the unused product oil. This estimation shall be based upon a review of the product oil label, the material safety data sheet for the product oil if available, the manufacturer's specification for the product oil, consultation with the manufacturer of the product oil, or by other means verifiable by the Department.

2. Determine the halogen content of the used oil due to use. This estimation shall be based on an assessment of whether the equipment or process generating the used oil ordinarily results in the introduction of any halogenated substances into the used oil. Unusual occurrences such as, but not limited to, a break in a seal that ordinarily keeps the oil separated from halogenated substances shall also be taken into account in making this estimation.

3. Determine the halogen content of the used oil resulting from mixture of the used oil with halogenated substances. (Separated layers, abnormal viscosity, unusual colors, or unusual odors are indicators that mixing has occurred.) In making this determination, the possibility and likelihood that mixture of the used oil with halogenated substances has occurred shall be evaluated. This evaluation may include, but is not limited to, discussions with persons handling the used oil.

4. Add the individual halogen contents in subsections (a)(1)(B)1. through (a)(1)(B)3. to determine if the total halogens in the used oil exceeds 1,000 ppm.

(2) Records of analyses conducted or information used to comply with subsections (a)(1)(A) or (B) above shall be maintained by the generator for at least three years.

(3) Transporters of used oil shall determine, prior to accepting used oil for transport and prior to placing used oil on or in the transport vehicle, whether the used oil contains more than 1,000 ppm total halogens by:

(A) testing each shipment of used oil for total halogens as specified in section 66279.90(a); or,

(B) applying knowledge of the halogen content of the used oil in light of the materials or processes used. A transporter of used oil who elects to apply knowledge in lieu of testing to determine if used oil exceeds 1,000 ppm total halogens may follow the procedures in subsection 66279.10(a)(1)(B) as they apply to generators, or obtain a written certification from each generator of the used oil stating that the generator has determined the used oil does not contain more than 1,000 ppm total halogens by testing the used oil for halogens as specified in subsection 66279.90(a), or by applying knowledge of the halogen content of the used oil, as specified in subsection 66279.10(a)(1)(B).

(4) Used oil transfer facilities shall determine, prior to accepting used oil, whether the used oil contains more than 1,000 ppm total halogens by testing each shipment of used oil for total halogens as specified in section 66279.90(a).

(5) Used oil recycling facilities shall determine, prior to accepting used oil, whether the used oil contains more than 1,000 ppm total halogens by testing each shipment of used oil for total halogens as specified in section 66279.90(a).

(6) Used oil collection centers shall determine whether each shipment of used oil prepared for off-site transport from the collection center location contains more than 1,000 ppm total halogens by testing the used oil for total halogens as specified in section 66279.90(a) or by applying knowledge of the halogen content of the used oil in light of the materials or processes used. An owner or operator of a used oil collection center who elects to apply knowledge in lieu of testing to determine if the used oil contains more than 1,000 ppm total halogens shall follow the procedures in subsection 66279.10(a)(1)(B) as they apply to generators, or obtain a written certification from each generator of the collected used oil stating that the generator has determined the used oil does not contain more than 1,000 ppm total halogens by testing the used oil for halogens as specified in subsection 66279.90(a), or by applying knowledge of the halogen content of the used oil, as specified in subsection 66279.10(a)(1)(B).

(b) Rebutting the rebuttable presumption. Persons may rebut the presumption that used oil containing more than 1,000 ppm total halogens is a hazardous waste because it has been mixed with halogenated hazardous waste in Subpart D of Part 261, Title 40, Code of Federal Regulations (commencing with section 261.30) by demonstrating through analytical testing or other means of demonstration that the used oil does not contain such hazardous waste.

(1) The rebuttable presumption is not rebutted if the used oil contains significant concentrations of any of the individual halogenated hazardous constituents listed as a hazardous spent solvent (i.e., EPA Hazardous Waste Numbers F001 or F002) in Appendix VIII of Part 261, Title 40, Code of Federal Regulations. A significant concentration of any individual halogenated constituent listed as a hazardous spent solvent (i.e., EPA Hazardous Waste Numbers F001 or F002) in section 261.31 of Title 40, Code of Federal Regulations is 100 ppm or greater.

(2) The rebuttable presumption is not rebutted if the used oil contains significant concentrations of any non-solvent individual halogenated hazardous constituents listed in Appendix VIII of Part 261, Title 40, Code of Federal

Regulations. Unless the generator demonstrates to the Department that contamination of the used oil occurred solely as a result of use of the oil, used oil containing any detectable concentrations of non-solvent individual halogenated hazardous constituents listed in Appendix VIII of Part 261, Title 40, Code of Federal Regulations, shall be deemed a significant concentration.

(3) The rebuttable presumption is rebutted if it is demonstrated that the used oil is metalworking oil/fluid containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Title 40, Code of Federal Regulations section 279.24(c), to reclaim metalworking oil/fluid. However, the rebuttable presumption is not rebutted if such metalworking oil/fluid is recycled in any other manner, is disposed, or has been mixed with other hazardous wastes, including used oil from other sources. Metalworking oil/fluid for which the rebuttable presumption is rebutted remains otherwise subject to regulation as used oil.

(4) The rebuttable presumption is rebutted if it is demonstrated that the used oil is contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. However, the rebuttable presumption is not rebutted if the used oil contaminated with CFCs is from sources other than refrigeration units or if the used oil contaminated with CFCs removed from refrigeration units has been mixed with other hazardous wastes, including used oil from other sources. Used oil contaminated with CFCs for which the rebuttable presumption is rebutted remains otherwise subject to regulation as used oil.

(5) The rebuttable presumption is rebutted if it is demonstrated that the used oil is exclusively household do-it-yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

(A) If the used oil is not exclusively household do-it-yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations, but also contains used oil collected from other sources, then the rebuttable presumption is not rebutted unless it is demonstrated, by testing all sources of oil contained in the collected used oil for total halogens as specified in section 66279.90(a), that the source of the total halogens exceeding 1,000 ppm is solely from household do-it-yourselfer used oil or used oil collected from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

(c) Used oil shall not be intentionally mixed with other hazardous waste, including household hazardous waste and hazardous waste from a conditionally exempt small quantity generator as defined in section 261.5(a) of Title 40, Code of Federal Regulations.

NOTE: Authority cited: Sections 25150, 25159, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25218, 25218.3, 25218.8, 25250.1, 25250.4 and 25250.7, Health and Safety Code; and 40 CFR Sections 279.1, 279.10(b)(ii), 279.11, 279.20, 279.21, 279.30, 279.40, 279.44 and 279.53.

#### HISTORY

1. New article 2 (section 66279.10) and section filed 6-22-95 as an emergency; operative 6-22-95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-20-95 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (section 66279.10) and section refiled 10-20-95 as an emergency; operative 10-20-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-17-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of HISTORIES 1 and 2 (Register 96, No. 11).
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 44).
5. New article 2 (section 66279.10) and section refiled 3-14-96 as an emergency; operative 3-14-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-96 or emergency language will be repealed by operation of law on the following day.
6. New article 2 (section 66279.10) and section refiled 7-9-96 as an emergency; operative 7-9-96 (Register 96, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-6-96 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction adding new HISTORY 4 and renumbering HISTORIES (Register 96, No. 44).
8. New article 2 (section 66279.10) and section refiled 11-1-96 as an emergency; operative 11-1-96 (Register 96, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-3-97 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11-1-96 order transmitted to OAL 12-23-96 and disapproved 2-6-97 (Register 97, No. 6).
10. New article 2 (section 66279.10) and section filed 2-7-97 as an emergency; operative 2-7-97 (Register 97, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-9-97 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-7-97 order transmitted to OAL 6-6-97 and disapproved 7-22-97 (Register 97, No. 30).
12. New article 2 (section 66279.10) and section filed 7-22-97 as an emergency; operative 7-22-97 (Register 97, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-97 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7-22-97 order, including amendment of subsection (a)(1)(B), new subsections (a)(1)(B)1.-(a)(2), subsection renumbering, and amendment of newly designated (a)(3)(B) and (a)(6) transmitted to OAL 11-19-97 and filed 1-5-98 (Register 98, No. 2).